U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD COONRADT and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, San Jose, Calif.

Docket No. 96-759; Oral Argument Held March 10, 1999; Issued April 28, 1999

Appearances: *Daniel S. Webster, Esq.*, for appellant; *Paul J. Klingenberg, Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant has established that his cardiac condition and myocardial infarction of November 16, 1989 were causally related to factors of his federal employment.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

In the present case appellant, an Internal Revenue Service (IRS) Examination Division Chief, filed a claim on April 12, 1990 alleging that he had sustained a heart attack on November 16, 1989 which was caused by stress arising from his federal employment. The Office of Workers' Compensation Programs denied appellant's claim by decision dated August 9, 1990 on the grounds that appellant had not established that his cardiac condition was causally related to factors of his federal employment. Appellant, by his representative, thereafter requested a hearing before an Office hearing representative. A hearing was held on April 23, 1991 at which appellant appeared and testified. By decision dated June 28, 1991, the hearing representative found that there was a conflict in medical opinion between appellant's treating physician, Dr. Embree H. Blackard, Jr., a cardiologist, and Dr. Maurice Eliaser, Jr., a Board-certified cardiologist, acting as an Office second opinion physician. The hearing representative stated that the Office should prepare a complete statement of accepted facts, utilizing the information now contained in the record, including the information offered by the claimant at the hearing of April 23, 1991, and refer this statement along with the complete record and appellant to an impartial medical specialist to resolve the conflict in medical opinion.

The Office hearing representative properly determined that a conflict existed in the medical opinion evidence as Dr. Blackard supported appellant's *prima facie* case that his cardiac condition and myocardial infarction were causally related to his federal employment, while

Dr. Eliaser, the Office's second opinion physician, opined that appellant's cardiac condition was not causally related to his federal employment. 5 U.S.C. § 8123(a) provides that "[I]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." The Office hearing representative therefore properly remanded the case for an impartial medical evaluation.

On remand, the Office selected Dr. Charles A. Webster, a Board-certified cardiologist, to act as an impartial medical specialist and referred appellant for examination. On appeal, appellant contends that Dr. Webster should be disqualified from serving as the impartial medical specialist as he was not notified by the letter of Dr. Webster's appointment as a referee specialist. Under the circumstances of this case, the Board finds this argument is without merit.

The Board has held, in the case of *Henry J. Smith, Jr.*,[1] that when the Office does not notify a claimant of a physician's status as an impartial medical specialist, that physician may not serve as the impartial medical specialist in that case. The Office's procedures, as noted in the *Smith* decision, are intended to assure a claimant's knowledge that a physician is an impartial medical specialist, so that he or she may then choose to exercise the procedural right to participate in the selection of the impartial medical specialist.

In this case, appellant received actual notice from the Office on two occasions that Dr. Webster was selected as an impartial medical specialist. The hearing representative's decision of June 28, 1991 found that a conflict existed in the medical evidence which required referral of appellant to an impartial medical specialist. Both appellant and his representative were apprised by this decision that appellant would be referred to an impartial medical specialist. In a factually similar case, *David Alan Patrick*,[2] the Board found that a conflict existed in the medical opinion evidence and remanded the case for an impartial medical examination. On subsequent appeal, appellant's representative alleged that he had not been specifically advised that the Office's medical referral on remand was for an impartial medical evaluation. The Board found that its prior decision constituted actual notice that the case would be remanded for an impartial referee examination. In this case, the hearing representative's decision provided an analogous notice as in the Board's decision in the *Patrick* case. Appellant also received actual notice of Dr. Webster's status in his copy of the July 22, 1991 Office letter to Dr. Webster, in which the Office noted explicitly that Dr. Webster was appointed to resolve a conflict of medical opinion.

Moreover, appellant's representative did not set forth a valid reason for why he wished to participate in the selection process or raise a specific objection to the appointment of Dr. Webster. Under Office procedures, a claimant who asks to participate in the selection of an impartial medical specialist or who objects to the selected physician must provide a valid reason. The procedural opportunity of a claimant to participate in the selection of an impartial medical specialist is not an unqualified right as the Office has imposed the requirement that the employee

[1] 43 ECAB 524 (1992); *reaff'd on recon.*, 43 ECAB 892 (1992).

[2] 46 ECAB 1020 (1995).

provide a valid reason for any participation request or for any objection proffered against a designated impartial medical examiner.[3]

As appellant's representative did not state to the Office a valid reason why he wished to participate in the selection of the impartial medical examiner or otherwise raise a specific objection to the selection of Dr. Webster, his request does not conform with the Office's procedural requirements for participating in the selection of an impartial medical examiner.

In a report dated October 1, 1991, Dr. Webster provided an opinion based upon the medical record referred to him by the Office and the statement of accepted facts, that appellant had a cardiac dysfunction secondary to myocardial infarction secondary to arteriosclerotirc heart disease which was related to the risk factors of smoking, hypercholesterolemia, hypertension, and family history of heart disease. Dr. Webster ruled out mental and emotional stress as an etiological factor in the underlying arteriosclerotic heart disease, or a precipitating factor in the myocardial infection.[4]

Following Dr. Webster's examination, appellant submitted an additional report to the record from Dr. Eliaser, who had previously examined appellant on behalf of the Office, and new reports from Dr. William S. Breall, a Board-certified cardiologist. The Office again denied appellant's claim after merit reviews on April 14, 1993, July 14, 1994 and September 25, 1995.

In his December 17, 1992 report, Dr. Breall stated that appellant's diagnoses were atherosclerotic coronary artery occlusive disease, triple vessel; old anteroseptal apical wall myocardial infraction, secondary to #1; apical mural thrombus, secondary to #2; and status postoperative coronary bypass surgery, secondary to #1. Dr. Breall explained that during the time period November 14 to 16, 1989, appellant was at work when he became symptomatic. He also noted that it was during these days that appellant suffered from an extreme amount of emotional distress while at work. It was during this period of emotional work stress, Dr. Breall explained giving a speech, meeting with recalcitrant taxpayers, meeting with various IRS office mangers, that appellant developed recurring chest pain which ultimately proved to be an acute anterior wall myocardial infarction. Dr. Breall opined that it was quite clear that the acute emotional stress of the work performed by appellant during this period was sufficient to have precipitated an acute myocardial infarction, and that this acute myocardial infarction, therefore, must be considered work related. He further noted that appellant had severe and long-standing atherosclerotic coronary artery occlusive disease involving all of his major coronary arteries, and that there was no question that he suffered from a number of nonindustrial risk factors, which included a positive family history, labile systolic hypertension, hypercholesterolemia, past history of smoking, male gender, as well as the aging process. In explaining medical causation, Dr. Breall stated that appellant demonstrated a severe degree of Type A or coronary prone behavior which was made worse by his job as audit director, as his job caused a heightened degree of hostility, time urgency, anger, irritation, aggravation and impatience. He explained

[3] *Terrance R. Stath*, 45 ECAB 412 (1994).

[4] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight. *Roger Dingess*, 47 ECAB 123 (1995).

that Type A coronary prone behavior was a recognized independent risk factor for the development of coronary artery atherosclerosis and that appellant had these risk factors independent and irrespective of his work. Dr. Breall concluded that therefore, one had to accept the fact that appellant's behavior pattern which was aggravated and accelerated by his work resulted in a heightened degree of atherosclerotic deposit within his coronary arteries and that appellant's myocardial infarction of November 1989, as well as the long-standing atherosclerotic coronary artery occlusive disease and the need for coronary artery bypass surgery were related to his work for the IRS.

In his report dated January 4, 1993, Dr. Breall commented upon conclusions provided by Dr. Eliaser and Dr. Webster. Dr. Breall then opined that his own prior opinion was well rationalized and scientifically correct. He explained that acute emotional distress would cause an increased activity of the heart; that an increase in work activity of the heart would necessitate the requirement of an increased amount of blood oxygen to the harder working heart muscle; that the demands of increased work if the heart would not be met because of the interposition of narrow atherosclerotic coronary arteries, and when this occurred significant deprivation of oxygen from the heart muscle would precipitate a myocardial infarction. Finally, Dr. Breall reiterated that appellant had repeated acute emotional stress exposure at work between November 14 and 16, 1989 and that appellant's onset of symptoms occurred with the acute emotional distress.

In his report dated May 15, 1995, Dr. Eliaser, in relevant part, noted that the July 6, 1990 statement of accepted facts did not include information regarding the time period nor circumstances immediately preceding the infarction. He also stated that the acute sequence as of November 14, 1989 pertaining to work obligations, was consistent with preinfarction angina. However, he noted that because of the discrepancies among the medical histories, the significance and validity of this course of events was somewhat obscure.

The Board finds that although Dr. Webster, the impartial medical specialist in this case, opined that appellant's cardiac conditions were not caused by emotional stress he sustained in the performance of his federal employment, appellant subsequently submitted reports from Dr. Breall. Dr. Breall reviewed in considerable detail appellant's activities between November 14 and 16, 1989 and stated that the employment activities appellant engaged in during this time period were emotionally stressful and that this emotional stress did cause appellant's cardiac conditions. The Board finds that these reports from Dr. Breall constitute new evidence and are sufficient to create a new conflict in medical opinion with the report of Dr. Webster.[5]

The Board also notes that the Office hearing representative on June 28, 1991, instructed the Office to prepare a new statement of accepted facts prior to the impartial medical examination by Dr. Webster, and to utilize appellant's hearing testimony to identify which specific duties appellant performed from November 14 to 16, 1989 were accepted factors of employment. While the Office did prepare a lengthy statement of accepted facts, it did not utilize appellant's hearing testimony to make findings regarding specific or specified accepted factors of employment from November 14 to 16, 1989.

[5] *See Margaret Ann Connor*, 40 ECAB 214 (1988).

On remand, the Office shall prepare a new statement of accepted facts which in addition to describing appellant's regular employment duties, shall describe the employment duties appellant engaged in from November 14 to 16, 1989 and shall find whether such duties were factors of employment. The Office shall thereafter refer appellant to a Board-certified cardiologist for a new impartial medical evaluation. After such further development as necessary, the Office shall issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated September 25, 1995 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
April 28, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member